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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
Plaintiff,)
PATRICIA HUIZACHE,)
Intervener,)
v.)
SIZZLER USA RESTAURANTS, INC.)
Defendant.)
_____)

Case No.: C-06-6142 J F PVT

**ORDER DENYING AS MOOT AND
WITHOUT PREJUDICE PLAINTIFF'S
MOTION FOR ORDER OF CIVIL
CONTEMPT**

Plaintiff Equal Employment Opportunity Commission brought this action on behalf of Patricia Huizache alleging that Defendant subjected Ms. Huizache to a hostile environment based on her sex and national origin. On March 9, 2007 Plaintiff filed a motion to compel responses to discovery.¹ On April 10, 2007, after Defendant failed to file an opposition, this Court granted Plaintiff's motion and ordered that discovery be produced no later than April 20, 2007. Defendant did not comply. Plaintiff filed a motion for contempt on May 22, 2007. Defendant filed no opposition to this motion.

¹The facts are set forth more fully in the Court's Order dated July 5, 2007.

1 On June 26, 2007, the parties appeared before Magistrate Judge Patricia V. Trumbull for a
2 hearing on Plaintiff's Motion for Order of Civil Contempt. Defense counsel, Glen Mertens,
3 appeared at the hearing and stated that he deliberately did not file an opposition to the motion for
4 contempt because he was in violation of the court order.

5 During the June 26, 2007 hearing, this court ordered a recess during which counsel for both
6 parties were to confer to try to resolve this discovery dispute. Counsel agreed that Defendant will
7 verify that all responsive documents have been produced and will provide the person or persons
8 most knowledgeable about the responsive documents for a deposition pursuant to Federal Rule of
9 Civil Procedure 30(b)(6).

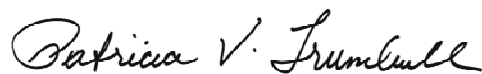
10 On July 5, 2007, the Court issued an order finding that Defendant's failure to oppose
11 contempt was not acceptable and being in violation of a court order is not a valid reason to fail to
12 oppose a motion for contempt. The Order required Defendant to file a verification of discovery
13 responses, including a statement by Mr. Mertens, under penalty of perjury, describing: 1) all efforts
14 made to locate responsive documents and 2) the circumstances under which any responsive
15 documents were lost, destroyed, or otherwise made unavailable for production. At that time, the
16 court kept the motion for contempt under submission and invited the Plaintiff to renew the motion if
17 Defendant fails to provide the promised additional discovery.

18 On September 4, 2007, Defendant timely filed the requested verification. Plaintiff has not
19 contacted the Court to indicate any deficiency with the discovery or the verification provided.
20 Accordingly, it is hereby ORDERED that:

- 21 1. Plaintiff's Motion for Civil Contempt is Denied as Moot and without
22 Prejudice; and
- 23 2. If Plaintiff encounters further problems with discovery, Plaintiff is invited to
24 renew the Motion for civil contempt.

25 IT IS SO ORDERED.

26 Dated: November 7, 2007



27 PATRICIA V. TRUMBULL
28 United States Magistrate Judge